

PATENTS  
Attorney Docket No. UV-137 Cont. 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants : Jerry Alten et al.

Application No. : 09/410,853 Confirmation No. : 7565

Filed : October 1, 1999

For : IMPROVED ELECTRONIC TELEVISION PROGRAM  
GUIDE SCHEDULE SYSTEM AND METHOD

Art Unit : 2424

Examiner : Annan Q. Shang

New York, NY 10036  
June 29, 2009

Mail Stop Appeal Briefs - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

REPLY BRIEF

Madam:

Pursuant to 37 C.F.R. § 41.41(a), appellants are filing this Reply Brief in reply to the Examiner's Answer dated April 28, 2009 ("the Examiner's Answer"), and in support of their appeal from the final rejection of claims 1, 2, 4-7, 13-20, 26-33, 39-45, 47 and 52-59 in the final Office Action dated August 9, 2007. Appellants previously filed a Notice of Appeal on December 5, 2007, an Appeal Brief on May 5, 2008 and an Amended Appeal Brief on January 21, 2009 ("Appeal Brief") in connection with this case.

## REMARKS

### I. Introduction

Appellants maintain the position that claims 1, 4, 5, 13, 14, 17, 18, 26, 27, 30, 31, 39, 40, 42, 43, 47 and 52-59 of the present application are patentable over Young in view of Richards and claims 2, 6, 7, 15, 19, 20, 28, 32, 33, 41, 44 and 45 of the present application are patentable over Young in view of Richards, and further in view of Palmer. Appellants submit that the Examiner's Answer is insufficient as a matter of law to uphold the 35 U.S.C. § 103(a) rejections of claims 1, 2, 4-7, 13-20, 26-33, 39-45, 47 and 52-59 for at least the reasons set forth in appellants' Appeal Brief. Appellants have filed this Reply Brief to address comments in the Examiner's Answer and to further demonstrate the patentability of appellants' claims 1, 2, 4-7, 13-20, 26-33, 39-45, 47 and 52-59.

### II. Summary of the Examiner's Answer

The Examiner's Answer maintains the § 103(a) rejections of claims 1, 2, 4-7, 13-20, 26-33, 39-45, 47 and 52-59 from the August 9, 2007 final Office Action and restates the same grounds of rejection from that Office Action.

The Examiner's Answer also provides comments in response to arguments presented in appellants' Appeal Brief.

### III. Summary of the Appellants' Reply

Appellants' Appeal Brief fully addresses the grounds of rejection stated in the August 9, 2007 final Office Action.

This Reply Brief will fully address the Examiner's comments in response to the arguments presented in appellants' Appeal Brief.

Appellants submit that the Board should find the final rejections of claims 1, 2, 4-7, 13-20, 26-33, 39-45, 47

and 52-59 under 35 U.S.C. § 103(a) to be in error and should reverse the Examiner.

IV.        Appellants' Reply to the Examiner's Answer  
Regarding Independent Claims 1, 14, 27 and 40

Appellants respectfully submit that the Examiner's Answer is insufficient to uphold the 35 U.S.C. § 103(a) rejection of claims 1, 14, 27 and 40 over Young and Richards.

Appellants' claimed invention, *inter alia*, is directed to tracking and storing a current operating mode of the electronic program guide and providing help information based on the stored current operating mode. In the final Office Action, the Examiner conceded that Young does not disclose (a) tracking and storing a current operating mode of an electronic program guide and (b) providing help information based on the stored current operating mode (final Office Action, page 6). In the Examiner's Answer, the Examiner alleges for the first time that Young discloses these features except for the "current" aspect of the operating mode (the Examiner's Answer, pages 4 and 16). Appellants respectfully disagree with the Examiner's allegations that Young tracks and stores various operating modes and provides help based on the stored operating mode.

Young describes a system that controls a television to allow user selection of programs from schedule information. The Young system has a Master Guide (MG) mode and a Program Guide (PG) mode. The MG mode is accessed by pressing the MG key 222 which allows direct selection of a program listing and automatic tuning to the selected program. The PG mode is accessed by pressing the PG key 224. The PG mode has various sub-modes for setting up the guide where one of the sub-modes allows a user to schedule programs for recording. When the user access the PG mode, a screen (shown in column 12, lines 35-44) is displayed

that explains each of the PG sub-modes. (Young, Abstract, col. 9, lines 50-55, col. 11, lines 25-30 and lines 60-66, col. 12, lines 20-35.)

A. Young Does Not Track And Store An Operating Mode Of The Electronic Program Guide

The Examiner alleges that storing user selections of programs for recording while in the PG mode of Young is the same as appellants' claimed tracking and storing of an operating mode (the Examiner's Answer, page 4). Appellants respectfully disagree. First, a user request to schedule a program for recording does not change the operating mode of Young. Rather, this causes the program to be stored in a schedule while the system remains in the PG mode of Young. Therefore, the storing of the user's recording request fails to show tracking an operating mode of an electronic program guide. In addition, storing a program in a schedule does not disclose storing an operating mode of an electronic program guide. Young discloses a typical schedule in col. 15, lines 60-68. The schedule includes the program title, time, and channel number. The schedule does not include any operating mode information (e.g., information identifying the PG mode or MG mode) of Young's electronic program guide. Moreover, Young does not disclose tracking or storing the operating mode of any of its other modes.

In view of the foregoing, contrary to the Examiner's allegations in the Examiner's Answer, Young does not track and store an operating mode of the electronic program guide.

B. Young Does Not Provide Help Information Based A Stored Operating Mode

Appellants respectfully submit that Young does not disclose providing help information to a user that is based on a

stored operating mode. Instead, Young discusses displaying help information when the user presses PG key 224 and does not disclose that the help information provided depends on a stored operating mode. Moreover, the help information that is provided is the same without regard to the operating mode of the guide and thus does not depend on the state of the guide. In particular, because the PG key 224 causes the system to always display the same screen that explains each of the PG sub-modes (i.e., the alleged help information), Young fails to show or suggest the help information being based on a previously stored operating mode.

Additionally, even if storing user program selections were the same as storing an operating mode (which they are not), Young still does not disclose providing help information based stored program selections. In particular, as discussed above, Young merely displays the alleged help information when a user presses PG key 224 but does not base that help information on any stored user selections. More specifically, PG key 224 causes the display of various information about the PG modes, shown in column 12, lines 35-45, but does not base the display of that information on any previously stored user program selections, let alone operating modes. Further, there is no nexus between what is displayed when the user presses PG key 224 key (e.g., text on the screen that informs the user that "PG A selects the theme setup mode", "PG P selects the prime time hours setup mode", etc.) and previously stored information relating to selections made by the user or operating modes.

Furthermore, when the user is in one of the PG sub-modes and presses PG key 224, the system will display on the bottom of the screen, the same text as was displayed when the user pressed PG key 224 the first time. This clearly demonstrates that the alleged help information that is displayed

is not based on stored program selections, the current state of the guide or any stored operating mode of the guide. In particular, because the alleged help information does not change depending on the mode of the guide, the help information is necessarily not based on a stored operating mode.

With regard to the MG mode, Young does not disclose any help information being displayed at all. In fact, Young states that when the MG key 222 is pressed, the TV screen displays a listing of programs. Moreover, even though Young states that PG key 224 is used for accessing help information, nowhere does Young discuss help information being provided for the MG mode (i.e., the current state) when PG key 224 or MG key 222 is pressed. In other words, Young does not provide help information that is based on an operating mode (e.g., based on the current state of the guide) that is being tracked and stored, as defined by appellants' claims. On the contrary, Young explicitly states that "[w]hen the PG key 224 is first pressed, ... information [shown on col. 12, lines 35-44 -- relating to the PG mode] is displayed." Thus, even if the user were in the MG mode and pressed PG key 224, the displayed information would inform the user about sub-modes of the PG mode and not the MG mode. This is clearly different from appellants' claimed approach which displays help information based on an operating mode that is being tracked and stored.

In view of the foregoing, contrary to the Examiner's allegations in the Examiner's Answer, Young does not provide help information to a user that is based on a stored operating mode.

#### C. Conclusion

In view of the foregoing, contrary to the Examiner's allegations in the Examiner's Answer, Young does not track and

store an operating mode of an electronic program guide and does not provide help information based on a stored operating mode. As demonstrated in the Appeal Brief, Richards also fails to show or suggest tracking and storing a current operating mode as well as providing help information based on the stored current operating mode and thus Richards fails to make up for the deficiencies of Young relative to the rejection.

For at least the foregoing reasons and the reasons set forth in the Appeal Brief, appellants respectfully submit that the Board should find the rejection of independent claims 1, 14, 27 and 40 under 35 U.S.C. § 103(a) to be in error and should reverse the Examiner.

V.        Dependent Claims 2-16 and 18-31

Appellants respectfully submit that the Board should find the rejections of dependent claims 2, 4-7, 13, 15-20, 26, 28-33, 39, 41-45, 47 and 52-59 to be in error and should reverse the Examiner for at least the same reasons why the Board should find the rejection of independent claims 1, 14, 27 and 40 to be in error.

VI.        Conclusion

For at least the reasons set forth above, appellants respectfully submit that claims 1, 2, 4-7, 13-20, 26-33, 39-45, 47 and 52-59 are in condition for allowance. The Examiner's rejections of these claims should be reversed.

Respectfully submitted,

/Gall C. Gotfried/  
Gall C. Gotfried  
Registration No. 58,333  
Agent for Appellants  
ROPES & GRAY LLP  
Customer No. 75563